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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,986	07/14/2003	David Boyd Melvin	MELV / 02CT	5972
26875	7590	02/01/2007	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			ISABELLA, DAVID J	
ART UNIT		PAPER NUMBER		3738
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/01/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/618,986	MELVIN, DAVID BOYD	
	<b>Examiner</b>	<b>Art Unit</b>	
	DAVID J. ISABELLA	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 31 March 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 7, 8, 13-20 is/are rejected.
- 7) Claim(s) 5, 6 and 9-11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/20/03;3/15/04;9</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

***Claim Rejections - 35 USC § 102***

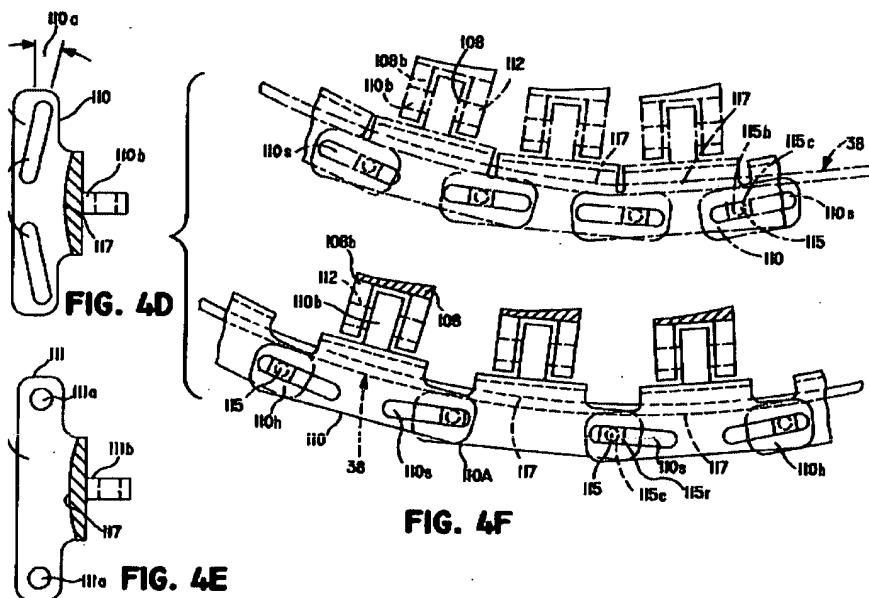
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 8 and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Heilman et al. (USPN 5,383,840, as cited in applicant's IDS).

Heilman et al. discloses an actuation system (20) for assisting the operation of the natural heart (22) with all the elements of claims 1 and 17. See Figure 4A-4F



Column 4, lines 21-23 for a framework (138) interfacing with a natural heart (22). See Figure 5 and column 9, lines 55-60 for an actuator system (30) coupled to the

framework (38) via sheath assembly (124) and configured to engage an exterior surface of the heart (22). See Figure 5, column 3, lines 4-22 and column 11, lines 49-61 for the actuator system (30) comprising an actuator band (38) extending along a portion of the heart wall exterior surface and selectively movable between an actuated state and a relaxed state and operable, when in the actuated state, to assume a predetermined shape and thereby indent a portion of the heart wall to effect a reduction in the volume of the heart (22). See column 6, lines 49-57 for a curvature limiting device (108) coupled to the actuator band (38) via rotatable support spool (36) and operable for limiting the curvature that the actuator band (38) imposes on the indented portion of the heart wall. See Figure 5, column 9, lines 33-43 and column 10, lines 3-15 for a paving element (130) between the actuator band (38) and the heart wall for providing a smooth functioning of the band with the heart wall.

Claim 2, see column 6, lines 40-57 for a drive apparatus (combination of 36 and 40) coupled to the actuator band (38) and operable for selectively moving the actuator band (38) between the relaxed and actuated states to achieve the desired assistance of the natural heart (22).

Claim 3, see Figure 5, column 7, lines 55-57 and column 3, lines 17-18 for the actuator band (38) being configured to extend along a portion of the left ventricle heart wall, and the band, in the actuated state, configured to indent the wall and effect a reduction of the volume of the ventricle.

Claim 4, see Figure 5 and column 8, lines 19-22 for the actuator band (38) including a plurality of juxtaposed elements (links), the elements configured to be drawn

together in the actuated state and to cooperate with each other when drawn together to assume the predetermined shape (links of chain 138 are drawn together to form a shape with a smaller radius of curvature in the actuated state).

Claims 7 and 8, see Figure 5 and column 11, lines 22-24 for at least one end of the actuator band (38) being fixed to the framework (138) via housing (44) and sheath assembly (124) to which the framework (138) is attached (column 9, lines 55-59).

Claim 13, see column 6, lines 49-57 for the curvature limiting device (42) being operable for limiting the curvature of the actuator band (138) to a certain percentage of the natural curve of the portion of a heart wall exterior surface along which the actuator band (138) extends.

Claim 14, see column 3, lines 62-64 for a plurality of actuator bands (138) for indenting a portion of a heart wall.

Claim 15, see column 8, lines 21-22 for the actuator band (138) comprising a plurality of articulated elements (links), which move with respect to each other at joints.

Claim 16, see column 3, lines 19-22 and column 11, lines 60-61 for the actuator band (138), in the relaxed state, being operable to generally assume the natural curve of the heart wall surface along which the actuator band (138) extends.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heilman et al. in view of Mortier et al. (USPN 6,260,552, as cited in applicant's IDS).

Heilman et al. discloses an actuation system (20) for assisting the operation of the natural heart (22) with all the elements of claim 17, but is silent to the paving element (130) being flexible, including a mesh, and including a fabric, as required by claims 18, 19 and 20, respectively. See column 10, lines 6-11 for the paving element being made from a material that is relatively porous in nature to enhance tissue ingrowth, such as polyurethane foam. Mortier et al. discloses a transventricular splint including tension members with anchor pads, wherein the anchor pads (612 or 340) are made from a Dacron fabric or are enclosed in an envelope (446) with the bottom layer (447) being made from mesh Dacron in order to promote tissue ingrowth from the heart wall surface. See Figures 53 and 78, column 21, lines 21-31 and column 26, lines 41-45. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have the paving element be made from Dacron mesh or fabric, which are flexible by nature, as an alternative to polyurethane foam because applicant has not disclosed that the specified paving element material provides an advantage, is used for a particular purpose, or solves a stated problem over polyurethane foam. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with the paving element being made from polyurethane foam, Dacron mesh or fabric or other porous materials because the ability for the material to enhance tissue ingrowth is not affected by using one of these

materials over the other. Therefore, it would have been obvious to one of ordinary skill in the art to look to the teachings of Mortier et al. and an obvious matter of design choice to modify Heilman et al. to obtain the invention as specified in claims 18, 19 and 20.

***Response to Arguments***

Applicant's arguments filed 3/31/2006 have been fully considered but they are not persuasive. Contrary to applicant's arguments, the amendment "wherein a plurality of curvature limiting devices are coupled to the actuator band for limiting the curvature that the actuator band opposes on the indented portion of the heart wall" fails to distinguish over the plurality of curvature limiting devices (108) as disclosed in Heilman et al.

***Allowable Subject Matter***

Claims 5, 6 and 9-11 Claims 5, 6 and 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID J. ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
10/27/2006